IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1218 OF 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
RASIK MAVJIBHAI SARVAIYA & ANR. - Respondent(s)

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Appearance :
Ms. Maya Desai for Appellant(s).
None for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/08/2007

ORAL JUDGMENT

The appellant-Gujarat State Road Transport Corporation, being aggrieved by the award dated 15th April, 1986 passed by the

learned Motor Accident Claims Tribunal (Main), Rajkot in M.A.C. Case No.499 of 1984, has filed this appeal.

2. As the appellant is not challenging its liability, but, is only challenging the quantum of compensation, it is not necessary for this Court to refer to the factual disputes.

3. The learned Tribunal below has awarded a sum of Rs.36,000/- to the claimant, a young boy of 13 years, towards pain, shock and suffering and a sum of Rs.5,400/- towards future loss of income, assessing the loss to be Re.1/- per day for a period of fifteen years.

4. Ms. Maya Desai, learned Counsel for the appellant, submitted that the learned Tribunal below was unjustified in awarding a sum of Rs.36,000/- under the head of pain, shock and suffering.

5. The learned Tribunal below in paragraphs 24 and 25 of the judgement has referred to the injuries suffered by the young child. The doctor had found that the right shoulder was showing old fractured neck of humerus with epificial involvement and lipping of genoid. The doctor also observed that the said boy had suffered permanent partial disability

to the extent of 10% and would always feel difficult in doing heavy labour work. Though in the cross examination, the doctor had stated that there were chances that the difficulty in doing the heavy labour work may also go away after some time, but, he also qualified the statement by saying that the time lag would depend upon the individual and the nature of work. The learned Tribunal below did not rely upon the statement of the witnesses, who were saying that the boy was earning Rs.20/- per day, but, held that he could earn Rs.10/- per day only. In the opinion of this Court, the learned Tribunal did not properly appreciate the question of daily/monthly income of the young boy. If at the age of 13 (thirteen), he was earning Rs.10/- per day, then, in future, he could earn much more. The learned Tribunal, in the opinion of this Court, was unjustified in assessing the monthly loss of income at Rs.30/- per day. In my opinion, the monthly loss should have been assessed much more than what was assessed. If I interfere on the question of compensation under the head of pain, shock and suffering, then, I will also have to interfere on the question of loss of income to be suffered by the claimant. If I reduce the compensation under the head of pain, shock and suffering, I will have to enhance the compensation under the head of loss of future income.

6. Taking into consideration the totality of the circumstances, I

do not think that present is a fit case where this Court should interfere. The appeal deserves to and is, accordingly, dismissed. No costs.

[R.S.Garg, J.]

*kamlesh**